

REMARKS

The present amendment is in response to the Office Action dated August 14, 2009. Claims 29-33, 36-45, 47-50, 52-58, 67, and 69-76 are now present in this case. Claim 76 is currently amended.

The Office Action includes a rejection of an Information Disclosure Statement for failing to comply with the submission requirement set forth in 37 C.F.R. § 1.98. The applicant expresses his appreciation to the Examiner for the telephone conference with the applicant's attorney on October 30, 2009 to discuss the prior art submission. The Examiner noted that the prior art submission with the original application, filed on September 21, 1999 did not include the PTO Form 1449. The applicant subsequently filed an Information Disclosure Statement using PTO Form 1449 on January 17, 2001, but did not include a copy of the reference submitted with the original application. The applicant wishes to clarify that a prior art submission with the original application on September 21, 1999 did not include the PTO Form 1449 and that the Information Disclosure Statement filed on January 17, 2001 refers to the references filed on September 21, 1999.

Claim 76 is rejected under 35 U.S.C. § 112, second paragraph. The applicant has amended claim 76 in accordance with the Examiner's recommendation and respectfully requests the withdrawal of this rejection.

Claims 29-33, 35-50, 52-59, 61-66, and 74 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,845,255 to Mayaud. The applicant respectfully traverses the rejection and requests reconsideration. With respect to Claim 29, the Office Action correctly asserts that the record in Mayaud includes a listing of drug allergies. However, the Office Action concludes, without any support from Mayaud, that "Drug allergies are a statistical risk associate with a record of a drug in a database." (Office Action, p. 4). This is an unsupported conclusion in the Office Action. Mayaud teaches that "allergies 53 are here displayed as a helpful notation for the prescriber and do not become prescription elements as a result of being selected for display in this part of the screen." (Mayaud, col. 19, lines 35-38). Mayaud does state, at col. 19, lines 41-42, that "the system will review any drugs prescribed for relevance to

allergies 53.” However, a review of “drugs prescribed” clearly discloses that a human being (i.e., the prescriber) selects the prescriptions and that the system reviews the human-selected drug for relevance to allergies. For the Office Action to equate drug allergies to a “statistical risk” suggests that a system would automatically select a drug to which the patient may be allergic based on an optimization of various factors. This is not the case. Mayaud clearly discloses that the human (i.e., the prescriber) selects the drug.

The Office Action also asserts, at page 4, that the output shown in Fig. 11 of Mayaud is “optimized for both the risk to the patient and the economic cost.” This mischaracterizes the teachings of Mayaud. Mayaud states, at col. 39, lines 43-54 that a display, such as that illustrated in Fig. 7, may include pricing information which “can greatly influence M.D. decision-making, improving formulary compliance and reducing overall drug costs, without restricting a physician’s choices.” Again, Mayaud makes clear that the physician and not some automated system selects the drug. The list of potential drugs illustrated in Fig. 7 can include cost information that can affect the drug choice made by a human. Nothing automatically optimizes economic parameters in Mayaud. Furthermore, Fig. 11, described in cols. 39-40 of Mayaud, illustrates a system to provide the physician with additional information regarding alternative drug choices. The Office Action states that the output of Fig. 11 is optimized “for both risk to the patient and the economic cost.” However, the economic cost is not described in Fig. 11 as a factor. It is described with respect to Fig. 7 when the human being selects a drug. Nothing regarding Fig. 11 suggests an automated selection based on economic parameters. In addition, Fig. 11 describes a process by which alternative drugs are suggested based on their efficacy. There is no teaching that the system described in Fig. 11 includes any risk optimization. Indeed, it should be noted that the alternative drug amoxicillin suggested in Fig. 11 would be contra-indicated because of the patient’s allergy to penicillin listed under allergies 53 in Fig. 3. Nothing in the description of Fig. 11 suggests that either statistical risk or economic parameters are taken into account.

Because Mayaud clearly shows a human selection of drugs, it does not teach or suggest “presenting, on a computer output device, the subset of records

automatically jointly optimized based on the determined economic parameters and the statistical risk associated with the selected record” as recited in claim 29. Thus, Mayaud is simply missing claimed elements. For at least these reasons, claim 29 is allowable over Mayaud. Claims 30-33, 36-41 and 74 are also allowable in view of the fact that they depend from claim 29, and further in view of the recitation in each of those claims.

Claim 42 is a computer readable medium claim containing “a series of computer implemented instructions for controlling a computer to execute the method according to claim 29.” Claim 42 is allowable for at least the reasons discussed above with respect to claim 29. Claim 43 is allowable in view of the fact that it depends from claim 42, and further in view of the recitation within that claim.

The Office Action summarily rejects claim 44 with the brief statement “see claim 29.” (Office Action, p. 6). However, claim 44 differs from claim 29. Claim 44 recites *inter alia* “determining a user health parameter” and “defining a set of records related to nutritional supplementation from an electronic database based on a classification of the information there within and the user health parameter.” Claim 44 includes “determining a statistical risk” and “determining economic parameters for defined records.” Finally, claim 44 recites “presenting the set of nutritional supplementation records automatically optimized based on both the determined economic parameters and the determined statistical risk.”

As discussed in detail with respect to claim 29, Mayaud does not teach any technique for automatically optimizing records based on economic parameters and determined statistical risk. Specifically, the economic parameters discussed in the Office Action with respect to claim 29 is merely cost data for drugs that are presented to the physician to help the physician make a decision. There is no automated process that takes economic factors into account. Furthermore, the Office Action has incorrectly equated drug allergies to “risk factors.” As discussed above, Mayaud states that allergy information is “displayed as a helpful notation for the prescriber and do not become prescription elements as a result of being selected for display in this part of the screen.” (Mayaud, Col. 19, lines 35-38, emphasis added). Furthermore, the Office Action is mistaken in equating allergies with a statistical risk since that suggests the possibility

that an automated system would recommend a drug to which the patient has an allergy as part of a risk optimization process.

Mayaud does not teach or suggest any automatic optimization of records “based on both the determined economic parameters and the determined statistical risk” as recited in claim 44. Accordingly, claim 44 is allowable over Mayaud. Claims 45, 47-50, and 52-56 are also allowable in view of the fact that they depend from claim 44, and further in view of the recitation in each of those claims.

Claim 57 is a computer readable medium claim “having recorded thereon a series of computer implemented instructions for controlling the computer to execute the method according to claim 44.” Claim 44 is allowable for the reasons discussed in detail above. Claim 57, as a computer readable medium claim executing the method according to claim 44, is also allowable for the reasons discussed above with respect to claim 44. Claim 58 is allowable in view of the fact that it depends from claim 57, and further in view of the recitation within the claim.

The Office Action Summary states that Claims 67, and 69-74 are rejected. The detailed action correctly lists all claims (see Office Action, page 2), but claim rejections do not include any rejection for claims 67, and 69-74. Accordingly, the applicants believe that claims 67 and 69-74 are in condition for allowance.

The Office Action states, at page 4, that claims 75 and 76 are also rejected as anticipated by Mayaud. However, the Office Action provides no details of any rejection of these claims. Accordingly, Claims 75 and 76 are believed allowable over Mayaud.

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. The applicant has made a good faith effort to place all claims in condition for allowance. If questions remain regarding the present application, the Examiner is invited to contact the undersigned at (206) 757-8029.

Respectfully submitted,
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